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Order of Business: The Senate Amendment to H.R. 5712 is scheduled to be considered on Monday, November 29, 2010, under a motion to suspend the rules and pass the bill.

Summary: Despite six months of knowledge that the temporary “doc fix” would expire on November 30, 2010, the majority was only able to propose and pass in the Senate a one month patch, paid for by codifying a payment reduction to multiple physical therapy services delivered in the same day.

Changes Since the Last Time This Legislation Was Before the House: The Senate took H.R. 5712, which passed the House by voice vote on July 14, 2010, and struck the language and replaced it with 2 new provisions: a one month SGR patch or “freeze” and a change in the treatment of multiple service payment policies for therapy services.

Physician Payment Update: The Senate Amendment to H.R. 5712 would prevent the 23% physician reimbursement cut from going into affect through extending the 2.2% increase in reimbursement levels, enacted in H.R. 3962, from November 30, 2010 to December 31, 2010. Like the last “doc fix,” the Senate Amendment to H.R. 5712 states that the patch would have no effect on the calculation of the SGR conversion factor in subsequent years, thus once again increasing the funding cliff. The one month patch will cost nearly \$1 billion over ten years.

Treatment of Multiple Service Payment Policies for Therapy Services: Section 3134 of the Patient Protection and Affordable Care Act (PPACA) required that the Secretary of Health and Human Services (HHS) identify potentially misvalued codes by examining “multiple codes that are frequently billed in conjunction with furnishing a single service.” Thus on November 2, 2010, the Centers of Medicaid and Medicare Services (CMS) filed the final rule, [Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011](#), that applied multiple procedure payment reduction (MPPR) to therapy services. Specifically, the final rule reduced the practice expense (PE) component (administrative and other overhead) of the second and subsequent outpatient therapy services that are furnished by a provider under the

Medicare physician fee schedule (PFS) in the office setting to the same patient on the same date by 25%.

Both CMS in the final rule, and GAO in a July 2009 report titled “Medicare Physician Payments: Fees Could Better Reflect Efficiencies Achieved when Services are Provided Together,” found that there are efficiencies when multiple physical therapy services are furnished in the same session and thus concluded that an MPPR policy could be appropriate for these services.

The Senate Amendment to H.R. 5712 would codify CMS’s final rule but make two changes. The first change to CMS’ final rule would reduce the payment cut from 25% down to 20% for multiple therapy services. The second change would remove the budget neutrality provision in the final rule as it relates to reduced expenditures for multiple therapy services. Thus instead of the savings generated from reduced reimbursements being reallocated to other areas of the PFS, the money will be used to pay for the one month SGR patch.

Background: Below is a summary of temporary SGR patches that the House has passed this year:

- The FY 2010 Defense Appropriations bill provided a temporary “patch” to the SGR formula, delaying the 21.2% cut to physician payments that otherwise would have occurred through February 28, 2010.
- The cut was again delayed through March 31, 2010, by H.R. 4691 (“Temporary Extension Act of 2010”) and then by the Baucus amendment to H.R. 4851 (“Continuing Extension Act of 2010”) through May 31, 2010.
- H.R. 4213, as passed by the Senate, would have extended the payment freeze with zero update through September 30, 2010. The House amendment to H.R. 4213, which passed on May 28, 2010 and was estimated to cost \$22.9 billion over ten years, would have provided positive updates through 2011, reverting back to the current SGR system but with an even higher funding cliff. CBO had estimated that the formula would call for a 33% cut in 2012 with additional cuts after that.
- Most recently, H.R. 3962, the “Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010,” provided a six month “doc fix” paid for by pension funding relief and other minor health care provisions taken from the larger extenders bill, H.R. 4213. The bill provided a 2.2% increase in reimbursement levels from June 1, 2010 through November 30, 2010, with an increased funding cliff. CBO estimated this to cost \$6.35 billion over ten years.

Committee Action: The Senate Amendment to H.R. 5712 was introduced in the Senate on November 18, 2010, and passed without amendment by unanimous consent the same day.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: CBO estimated that this legislation would increase outlays by nearly \$1 billion over ten years, while reducing spending by roughly the same amount.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill provides nearly \$1 billion over 10 years in new mandatory spending.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO report citing intergovernmental or private-sector mandates was available at press time.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee report citing earmarks, limited tax benefits and tariff benefits is unavailable.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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